IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CMPMO No. 370 of 2006

Date of Decision:**3.1.2007**

Rakesh Jolly	Petitioner
Versus	
Bhim Singh and others	Respondents

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

Whether approved for reporting[1]? Yes.

For the petitioner: Mr.Suneel M. Goel, Advocate

For the respondents: None.

V.K.Gupta, C.J. (Oral)

Vide the impugned order dated 1st November, 2006 passed by the learned Addl. District Judge (Fast Track Court), Kullu, the defence of the petitioner-defendant No.3 has been struck off on the ground that he failed to file written statement within the period of 90 days from the date of service of summons upon him.

It is the admitted case of the petitioner-defendant No.3 before me that appearance on his behalf was put in before the learned trial Court for the first time on 27th April, 2005 and the written statement was filed by him only on 22nd August, 2006.

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

The only ground urged by the petitioner-defendant No.3 before the learned trial Court in support of his contention about not filing the written statement before 22nd August, 2006 was that defendant No.2 had not been served till then and that he (defendant No.2) having been served on 22nd August, 2006, defendant No.3 filed his written statement on this date. This contention did not find favour with the learned trial Court which, as noticed at the outset, vide the impugned order struck off the defence of the petitioner-defendant No.3.

The contention put forth by the petitioner-defendant No.3 before the learned trial Court has been reiterated today before me by Mr.Goel, learned counsel appearing for him. Mr.Goel's contention is that if in a suit there are more than one defendants, the defendant or defendants who have been served may not file the written statement within the period of 30 days, or the extended period of 90 days from the date of his or their service, if any other defendant or defendants in the suit have not been served in the meanwhile. According to Mr. Goel, if any defendant or defendants in a suit have not been served and if other defendant or defendants, who have been served do not in the meanwhile file his or their written statements, no prejudice is caused to anyone nor is the disposal of the suit delayed because in any

event, according to Mr. Goel, service of other unserved defendant, or defendants has to be completed before the suit proceeds beyond the stage of filing of the written statement. The argument even though appears to be attractive on the face of it deserves to be summarily rejected because the plain language of Order 8 Rule 1, CPC very clearly suggests and unambiguously stipulates that each and every defendant in a suit, if there are more than one defendants, has to file his written statement within a period of 30 days, or the extended period of 90 days from the date of his service. It is absolutely preposterous to import into Rule 1 of Order 8, CPC the aforesaid doctrine that the time for filing the written statement starts running only from such date when all the defendants have been served in the suit. This would defeat the very purpose for which this rule was introduced in the Code of Civil Procedure by the Civil Procedure Code (Amendment) Act, 2002. The purpose behind the introduction of the Rule was to cut short the delays in the disposal of the suits. An absolutely plain reading of this Rule leaves no one in any manner of doubt that the time for filing the written statement, whether 30 days, or 90 days, starts running from the day a defendant has been served in the suit even though in the same suit other defendant or defendants have not been served. The

defendant, who is served in the suit cannot claim the extension of period for filing the written statement only on the ground that other defendant or defendants have not been served or that the served defendant shall file the written statement only after the service of other defendants has been completed. The learned trial Court was, therefore, wholly justified in adopting the view, which it has taken in the impugned order.

Even though I have rejected the aforesaid contention of the petitioner, looking to the fact that on 22nd August, 2006 the petitioner had actually presented the written statement before the learned trial Court, in my considered opinion, a lenient view can be taken in this matter, whereby the petitioner-defendant No.3 be permitted to file the written statement subject to payment of heavy costs.

Even though I am upholding the view taken by the learned trial Court in the impugned order, but adopting a lenient approach in this case, I set aside the operative part of the impugned order and while permitting the petitioner-defendant No.3 to file written statement direct the learned trial Court to accept the same and place it on record subject to the condition that the petitioner-defendant No.3 pays to the plaintiff- respondent No.1 costs of Rs.10,000/- within a period of two weeks from today. If the

costs are not paid during this period, this order shall cease to operate and the operative part of the impugned order shall stand restored.

Since this order has been passed in the absence of plaintiff-respondent No.1 for the sake of expeditious disposal of the suit, he is at liberty to approach this Court for recall of this order.

The petition is disposed of.

CMP No.764/2006

In view of the disposal of the main petition, the present application is also disposed of.

3rd January, 2007 (V.K.Gupta), C.J.
(C)